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THASAWALAMY:

OR, THE

LAWS AND CUSTOMS OF THE MALABARS

OF

J A F F N A.

REVISED, ABRIDGED, AND ARRANGED,

BY

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VALA SUPERMANIER AYER, AND SENA-
DERAYA MODELAR, PROCTORS, OF
THE DISTRICT COURT OF JAFFNA.

PRESS OF THE AMERICAN MISSION, MANIPAY.
1835.

IN publishing this small, but it is trusted, useful and correct, Pamphlet, on the Laws of Jaffna, it is but due to my co-adjutors to state, that its principal value is owing to the care and attention they bestowed on every clause of the work, as submitted to them on repeated consultation.

JAFFNA, CEYLON, DECEMBER, }
1834. }

THASAWALAMY.

DOWRY AND INHERITANCE.

- 1 Property is called "Moedesiom" or Hereditary, when brought by the Husband; "Chidenam" or Dowry, when brought by the wife; and such as is acquired during Marriage, is called "Teurdeatotom" or Acquisition.
- 2 Inherited Property is called Oremaay, and devolves, if inherited by a Husband, in the same manner as his Hereditary property; if by a Wife, like her Dowry, and it is liable to any claims those properties are.
- 3 Dowry granted to Daughters in marriage may be taken at will from Hereditary, Dowry, or Acquired properties, as the Parents think proper, and near relations may enlarge a Dowry by adding some of their own property to it, taking care to describe such gift in plain terms in the Dowry Ola, and adding their signatures thereto.
- 4 Daughters must content themselves with the property specified in the Dowry Ola, having no further claim on the Estate after their Parent's death, except where there are no Sons or their descendants, when they will succeed to the whole Estate in equal shares.
- 5 A new married couple not taking possession of any property given them in Dowry for the term of 10 Years, forfeit their claim thereto, and such property reverts back to the common Estate, unless they have an act from their Parents explaining the delay.

- 6 Parents may give a Daughter a piece of Mortgaged land in Dowry, specifying that such Mortgage is to be redeemed by the married couple; but if they are unable to do so, and the Mortgagee does not wish to retain the Mortgage, the Parents themselves must redeem it, and keep possession until the Daughter to whom it was given in Dowry, shall pay the amount to them, which she has full power to do at any period.
- 7 If a young couple should lose any part of their Dowry property by a law suit, the Parents must make good the loss; or, if they are dead, the Son or Sons must do it, either in kind or money.
- 8 Parents if they prosper considerably, have a right to increase a Daughter's Dowry, by way of Donation.
- 9 Sons cannot claim any thing as long as their Parents are alive; indeed all they gain during their Batchelorship belongs to the common Estate, except ornaments of Gold and Silver, and Gifts. They are likewise bound at their Parent's death, to pay all the Debts, however little may devolve to them.
- 10 A married Woman dying without issue, her property devolves to her Sisters, their Children, or Grand children, in equal shares, or in succession to Brothers, their Children, or Grand children, in equal shares; failing all these, to the Parent or Parents. None of these surviving, all the property she received from her Father's side will revert to his nearest Relations, and all she received from her Mother's side will revert to to the Mother's nearest relations. The Acquired property will be divided equally between her Father's and Mother's nearest relations.
- 11 In the above case, it sometimes happens, that the Mother, if a Widow, and poor, by general consent, holds the property during her life, but it ought to be registered, to prevent disputes.

- 12 Sons dying without issue, their property devolves to Brothers, their Children or Grand children, in equal shares; or in succession, to Sisters, their Children or Grand children in equal shares; failing all these, to Parent or Parents. None of these surviving, the property he received from his Father's side, with half the Acquired property, will revert to the Father's nearest relations, and all he received from his Mother's side, and the other half of the Acquisition will revert to her nearest relations.
- 13 A Man must immediately give up his Wife's Dowry and half the Acquired property, to her Heirs, should she die childless; and in like manner, a Woman must give up her Husband's Hereditary, and half the Acquired property, to his Heirs, should he die without issue.
- 14 Parents becoming incapable from age to manage their property, may place it in charge of their Sons, and may again resume possession at will, though they have in that case no right to dispose of any part thereof without the sanction of the Judge.
- 15 The Father dying first, the property remains with the Mother, provided she takes charge of the Children, until the Daughters marry, when she must give them Dowries, but the Sons can claim nothing till the Mother's death.
- 16 The Mother marrying a second time, is obliged to give Daughters (if any) by both Husbands, Dowries from her own Dowry Property, and the Sons of the first marriage can immediately on the second marriage, claim their Father's Hereditary, and half the Acquired property of the first marriage, after deducting what may have been given to Daughters in Dowry. And if they are too young to manage the property themselves, the mother must give it over with the Sons in Guardianship, to the Father's nearest male Heirs.

- 17 The Mother mentioned in the last Clause, dying, the Sons of both marriages succeed to her remaining property in equal shares to each Son, and if an unmarried Daughter is left, she is entitled to a share also, besides which the Sons of the first marriage now take that half of the property acquired during the first marriage which had remained in her possession during the second marriage.
- 18 The Sons of the second marriage, are entitled (in the above case) if their Father is dead also, to their Father's Hereditary property, as well as to all property acquired during the second marriage, after the debts of that marriage are paid.
- 19 If any part of the property left in charge of the Wife during her second marriage is lessened, her second Husband or his Sons, must make good the deficiency.
- 20 A Mother dying first, leaving Children, the Father may keep the property as long as he does not marry again, doing with the Children and Estate in like manner as before stated, in Clause 15, with respect to Mothers.
- 21 A Father marrying a second time, the Children, if young, ought to be given in Guardianship to their Mother's nearest female relations, and if so, the Father must deliver over with them, all their Mother's Dowry, and half the property acquired during the first marriage, and when the Daughters are married the father must assign them Dowries from that share of the Mother's property so given up, and also from his own Hereditary property. If after all the Daughters are dowried any of this property remains in the Guardian's hands, the Sons of the first marriage may take and divide it at once, or hold it jointly till they marry; but if nothing remains, the Sons can claim nothing till their Father's death.

- 22 A Father dying, having Sons by both marriages, and the second Wife being dead also, his property is divided into two shares, one for the issue of each marriage; the Sons of the first marriage having first taken the remaining half of the property acquired during the first marriage, left in the Father's hands; and the Sons of the second marriage having divided the property acquired during that marriage, as well as what remains of their Mother's property left after dowrying the Daughters.
- 23 If any of the property left in care of the Father on his second marriage, is wasted, the Sons of that marriage must make up the deficiency.
- 24 Father and Mother dying whilst the Children are young, the relations choose a Guardian, who allots the Daughter's Dowries when they marry. If any of the Daughters remain unmarried till the Brothers want to marry, the property left in the Guardian's hands must be divided, though the Sisters ought to have a large share.
- 25 Unmarried Daughters dying, their property devolves to the married ones, unless the property has not been divided with the Brothers as in last Clause, in which case the married Sisters have no claim.
- 26 Natural Children cannot inherit any thing.
- 27 If a married couple die leaving Daughters only, some of whom are married, their property after paying the debts, is to be divided equally between the Daughter or Daughters unmarried.
- 28 If a Woman dies leaving a Son by the first marriage and a Son and Daughter by a second marriage, then, if the Son of the second marriage dies childless, his property devolves as follows: To his full Sister all the property derived from their Father's side, and half the property acquired during the second mar-

riage; and the half Brother by the first marriage will take all the remainder.

- 29 If a Man dies leaving a Son and Daughter by his first Wife, and one Daughter by his second, both of which Daughters have been married with Dowries, in this case his property is to be equally divided between the Son of the first, and Daughter of the second marriage (who here inherits because she has no full Brothers.)
- 30 Two married persons, who were the sole children of their respective parents, dying childless, and their parents being also dead, their property devolves thus : all the Husband received from his Father, will revert to his Father's nearest relations; and all he received from his Mother, will revert to her nearest relations. The Wife's property in like manner will revert to her Father's and Mother's nearest relations. The Acquired property is to be divided into four shares, one for each of the above mentioned parties, with the single exception that Gold and Silver made for the Husband, devolves to his Father's and Mother's relations, and that made for the Wife, will devolve to her Father's and Mother's relations.
- 31 One of a married couple dying childless, the Survivor must give up his or her property to the Heirs, as well as half the Acquired property, but should the Heirs leave the property in the Survivor's care, they must do so in writing, or take it back on a second marriage, failing doing either of which, they lose all claim, if the Survivor has any children by the second marriage.
- 32 All grain collected, is considered Acquired property, but crops not reaped, belong to, and devolve with the ground.
- 33 A Man's Hereditary or Wife's Dowry property

being diminished during marriage, it must be made good from the Acquired property if that suffices, or otherwise there is no claim.

34 A piece of Ground being improved during marriage, the Heirs of the Wife have no claim for those improvements of any kind, should it belong to the Husband's Hereditary property; nor have the Husband's Heirs any claim, should it be the Wife's Dowry property.

35 A Stranger coming into the District, and bringing no property, in marriage to a Native Woman thereof, his Heirs have no claim if he dies childless, but should the Wife die first childless, he is entitled to retain half the property, he has acquired by his own exertions.

36 A Man who brought no property in marriage, can if his Wife dies childless, only claim half the property he has acquired by his own industry, but nothing that has been acquired from the Wife's Dowry; but if he dies first, his Heirs can claim nothing. Also a Woman who brought no property in marriage, dying childless, her Heirs can claim nothing, nor has she any claim if the Husband dies first. If neither party brought property in marriage, the property acquired during marriage will be divided on the death of either, equally between the Survivor, and the Heirs of the deceased.

ADOPTION.

37 Persons wishing to adopt a Child, must first ask leave from their Brothers, Sisters, or nearest Heirs; having gained which, they must, in the presence of those Heirs and other witnesses, including Barbers, and Washermen, drink Saffron Water in which the before mentioned Heirs, and also the Parents of the Child to be adopted, have dipped their fingers.

- 38 The Brothers, Sisters, or Heirs, not agreeing, Saffron Water cannot be drank; yet a Child may be adopted, to whom may be bequeathed one tenth of the Husband's Hereditary, and Wife's Dowry property, and more than one tenth of their Acquired property if they have few debts. This adoption must be with the Judge's knowledge.
- 39 In both the above Cases, it is highly proper that Deeds should be executed by all the consenting parties.
- 40 The Child adopted as mentioned in Clause 37, inherits all the property of both Husband and Wife, but if it dies childless, the property reverts back to the nearest Heirs of the persons adopting.
- 41 If people have children of their own after adopting a child, all inherit together, but the adopted Child loses all claim on its own Parent's property.
- 42 An adopting Father drinking Saffron Water alone, the Child will succeed to the property of its own Mother; if the adopting Mother drank alone, the child likewise succeeds to the property of its own Father.
- 43 An adopted Boy and Girl may marry together if not related in Blood, and if one of them dies childless the Survivor inherits all.
- 44 An adopted Boy may marry the Daughter of persons adopting him, provided they are not nearer related in Blood than Brother's or Sister's Children, and they will inherit from one another as in the last Clause.
- 45 If only part of the near Relations consent, and dip their fingers in Saffron Water, whilst others refuse, a child may still be adopted, though it will only inherit the share of those Heirs who so consent; unless the non consenting Heirs for ten years forget to take possession, when they forfeit their claim.

- 46 Supposing there are three Brothers, only one of whom has children, one of these children may be adopted by either of the other Brothers, even against the consent of the third Brother, and the property of the Brother so adopting on his death, is equally divided between the adopted Child and the non consenting Brother. In this case the non consenting Brother can give away any of his property in his life time to any of the children of the first Brother.
- 47 A man adopting a Boy, it goes over into his caste.
- 48 A Man adopting a Girl she goes into his caste, but when she marries the children will belong to their Father's caste.
- 49 A Woman adopting a Child, it remains in its own caste, although it will inherit the Woman's property after her death.
- 50 Amongst Slaves, children are always of their Mother's Caste.

POSSESSION.

- 51 Two persons jointly possessing a piece of ground without division; and one of them fencing off and planting a portion of it, the other may ask to have the ground divided, but in complying therewith care must be taken to give the improved part to the partner who planted it, as the fruit of the trees clearly belong to the Planter.
- 52 The above division may be delayed till the other partner has also improved an equal share, and then the division must be general.
- 53 A person planting Coccoanut Trees by permission in another man's ground, claims two-thirds of the fruit if he furnished the plants; if not, he only claims one-

third—or, if each furnished half the plants they divide the produce equally.

- 54 A Person having a few **Palmira Nuts** in an **Odi-al Bed** has no claim, if they grow up, as they belong to the owner of the ground.
- 55 The produce of fruit-bearing **Trees**, planted with care and trouble, entirely belongs to the planter, although they should overhang another person's ground.
- 56 The produce of trees growing without trouble, such as **Margosa**, **Tamarind**, or **Illepe**, belongs to the owners of the ground the branches overshadow.
- 57 The branches of such **Trees** as are specified in the last Clause, may be cut by the owners of the grounds they overshadow, without permission of the owner of the ground the **Trees** grow on; and although a person may cut down such **Trees** as grow in his own ground he must give the branches thereof to any person whose grounds they overshadow.
- 58 The owners of the ground possess all young **Palmira Trees** that grow upon it, even if the old **Palmira Trees** belong to another person, except in the **Village of Araly**, where the owners of the old **Palmira Trees** take the young ones.
- 59 Owners of ground have a right to extirpate all young plants growing thereon when wanted for cultivation.
- 60 In **Timmoratchie** and **Patchilepally**, if **Trees** only and not **Grounds** are specified in the **Thomboos**, the owners of the old **Trees** take the young ones, but if the ground is specified, the owner of it, takes the young **Trees**.
- 61 In **Caretehy** and **Ponereen**, where there are no **Thomboos** the owners of old **Trees** take the young ones.

- 62 In Delft where the ground belongs to Government the owners of the old Trees take the young ones.

GIFTS.

- 63 A Husband living separate from his Wife cannot give any part of her Dowry property away; but if they live together, he may, with her consent, give a tenth part of it away.
- 64 A Husband even without his Wife's consent may give away one tenth part of his Hereditary property.
- 65 A Wife can give away nothing without the consent of her Husband.
- 66 A married couple receiving a garden in gift, on the death of either childless, it reverts to the nearest Heirs of the Husband or Wife to whom the gift was given, but the proceeds of it during marriage, belongs to the Acquired property.
- 67 If any one gets a present of a Slave, Cow, Sheep, Goat, or any thing that can be increased by procreation, it, as well as all its produce, belongs solely to the person it was given to, married or unmarried, and it will be inherited by his or her Heirs.
- 68 No compensation can be claimed for any part of a Gift sold or diminished.
- 69 A married couple being childless may give away part of their property of any kind to their Nephews or Nieces, if the nearest relations consent; as also one tenth of the Acquired property, even should they not consent. Such Gifts to Nephews who die childless devolve to their Brothers, or Brother's children, and Gifts to Nieces' dying childless, to their Sister, or Sister's Children. Wanting these, Gifts devolve to their Parents or Parent's Heirs, or eventually, to the Donors or their Heirs.

- 70 A Husband may give away by a regular Deed, part of his Hereditary property to one of his Sons, if he has no Daughters; and at the Parent's death, the Son may claim that Gift previous to the general division of the property, if he can show the Gift Deed.
- 71 Should the Son last mentioned die childless, the Gift would devolve to his Brothers, or their Children, next to Parent or Parents, or eventually the gift with half the property acquired on it would devolve to his Uncles, and the other half acquisition to his Aunts.
- 72 Had the gift been given by the Mother in the last case, it would devolve, on the Son's death, to Brothers or their Children, next to Parent or Parents, or, the Gift and half the Acquired property to Aunts, and the other half acquisition to Uncles.
- 73 A Gift from other than Parents, would devolve, failing Brothers, Sisters, or Parents to the male and female Heirs in equal shares.
- 74 Although property acquired by Sons before marriage, belongs to the common Estate, as mentioned in Clause ninth, yet they are entitled to keep Gifts of any kind in their own possession.
- 75 If a Husband has given away to his Heirs any of the Acquired property without his Wife's knowledge and they both die childless, the Wife's Heirs are entitled to an equal portion of the Acquired property, previous to the general division.

MORTGAGE.

- 76 A garden being mortgaged, conditionally that the produce is taken instead of interest, can only be redeemed after the crop is reaped.
- 77 In the last case, if the Mortgagee wishes for his money back, he must deliver up possession of the garden to the Mortgager, and wait one year for his mo-

ney. If at the expiration of that period it is not redeemed, it must be offered to the Heirs for purchase, and if they refuse, the Mortgagee must keep the land, and be confirmed in possession by a regular Deed.

- 78 It is the rule to redeem Warrago lands in July or August, Paddy lands in August or September, or if the Paddy ground was not sown that year, in November; Palmira, Betal, and Tobacco Gardens in November.
- 79 A Mortgager wishing to redeem his land, and forgetting to give due notice, must give the Mortgagee a proper share of that year's produce, according to the usual custom of the Village; but if they cannot agree, the Mortgagee holds the land that year.
- 80 A Mortgagee cannot prevent the sale of the ground by the Mortgager, but must receive his money back at the usual period of the year.
- 81 Fruit Trees are to be redeemed in December and January; and up to the day they are so redeemed, the Mortgagee may pluck all the fruits that can be considered ripe.
- 82 Should Slaves be mortgaged, the mortgager ought to pay for any medical aid required but if the Mortgagee does it, he has no claim for remuneration.
- 83 Mortgaged Slaves dying, the Mortgager must pay the money back to the Mortgagee.
- 84 Money advanced conditionally that Bullocks, or Buffaloes should be lent to plough, the proprietor must furnish other ones, should the cattle die.
- 85 If a person to whom Jewels are pledged, wears them himself, or lends them out in any way to be worn he can make no claim for interest on the sum so lent.

HIRE.

- 86 A person hiring Cattle of any description, has a claim for others, if those fall sick or die.
- 87 If hired cattle are hurt accidentally, the proprietor has no claim for the loss, but if they are hurt from carelessness, the hirer is answerable for the damage.

PURCHASES.

- 88 Heirs, Partners, Mortgagees, and neighbouring land holders, are entitled to have the first choice for purchasing any grounds put up for Sale.
- 89 If a garden is sold on which a Mortgage exists, the first Deed must be cancelled and a new one passed in the name of the purchaser, if not redeemed as in Clause 80.
- 90 There is no occasion for any Deeds being passed on sales of cattle.
- 91 Bullocks sold as "fit for ploughing," and not being found fit, may be returned back in fifteen days, at the purchaser's option.
- 92 A cow sold as having calved, and proving to be, and always having been, barren, may be returned to the seller in one year, but a "Heifer" sold and proving barren cannot be returned.

LOANS OF MONEY ON INTEREST.

- 93 Goods pledged as security for money lent, may be sold on application to the Judge (by a regular suit) if not redeemed with interest.
- 94 Securities must pay if the Debtor absconds, and they may recover from him afterwards, unless it can be proved that the Creditor fraudulently recommended the Debtor to abscond, on purpose to make the Securities liable.

- 95 If two persons jointly borrow money, and the Tamil expression "he who is present must pay the debt" is inserted in the **Bond**, the **Creditor** may recover the whole sum from either **Debtor**, who may afterwards recover half the debt from the joint borrower; but if the expression is not there, only half the debt can be recovered from each **Debtor**.
- 96 If a man contracts debts without his family's knowledge, his own property is liable thereto at his decease; or if he leaves none, his **Sons** are answerable if the debt be duly and plainly proved.
- 97 If a **Woman** gets in debt without her **Husband's** knowledge, the **Creditor** cannot recover, unless it be proved that she was a regular known "Trader" at the time the debt was contracted. If that be proved, the claim must be paid from the **Acquired** property, or if that is not sufficient, from her **Dowry** property only.
- 98 When **Interest** undrawn (from the last day of payment if any) equals the amount of principal, no further claim can be made.
- 99 If **Money**, or **Paddy** for seed corn, is lent, to receive **Paddy** for **Interest**, the quantity must be stipulated, and if the crop fails no **Interest** can be claimed; if the **Harvest** is bad, interest must be calculated accordingly.
- 100 If a **Man** and his **Wife** jointly borrow money on a **Garden**, and neglecting to deliver it over to the creditors, should afterwards give it in **Dowry**, the **Creditor** cannot on their death claim the **Garden**, but must recover from the remaining property; and the **Sons** are also liable to the debt.
- 101 One person's cultivating another's field without previous agreement, must pay the **Government** tithe,

and one third of the crop to the Proprietor. If the crop fails he is to pay nothing.

102 If when an Agreement is made, the crop fails on that ground only, and other grounds in the Village have good harvests, the Cultivator must pay the amount agreed on, as it is supposed the crop failed merely from inattention.

103 Fine Grains are exchanged at an equal rate, but Paddy at one Parrah for one and a half Parrahs of Fine Grain.

SLAVES.

104 All Slaves must be registered.

105 Slaves must have their Proprietor's leave before they can marry.

106 Slaves dying childless, the Master may claim the Dowry and Hereditary properties, also the Acquisition, if both slaves belonged to him; otherwise the Masters divide the Acquired property. If the Masters are rich, the Slave's Brothers and Sisters ought to possess, if the Master permit, but not otherwise.

107 A Child cannot inherit from its Father if the Mother did not belong to the same Master.

108 A Mother dying, her Master may take half the Dowry and one quarter of the Acquired property, or at his will may give all to her children.

109 All Children belong to the Proprietor of the Mother.

110 Slaves living separate from their Masters must maintain themselves, but ought to perform their Master's Government services, and fence their fields, receiving

maintenance whilst so employed. Before the English came, they used to give, if of the Palla or Nallava Casts, four fanams each, yearly to their Masters.

- 111 If Nallava or Palla Slaves whilst living separate from their Masters, are brought to bed, they may demand maintenance from their Masters, or may pawn one of their children for it. Covias also claim maintenance in like manner, but cannot pawn their children.
- 112 Persons selling Slaves who have lands, must take possession of those lands before the Slave is sold, or otherwise have no claim.
- 113 One giving a Slave Girl to another person, loses all right to her, or her Goods. The Girl also has no claim on her Parent's property, nor can they give her any thing without her former Master's consent.
- 114 A married couple having Children, may emancipate any of their Slaves at pleasure.
- 115 A Man having no children may emancipate any Slaves, by proclaiming it at the Church any three Sundays. If they belong to his Wife's Dowry, she must consent. If there is any dispute they must appoint Arbitrators.
- 116 A Man having a child by his Slave may emancipate it, and give it a donation not exceeding one tenth from his Hereditary property.
- 117 An emancipated Slave dying childless, the property devolves to any Brother or Sister on the Mother's side that is or are also free ;—next, to the legitimate children of the deceased's Father or eventually to the persons from whom the deceased received the property or their Heirs.







